

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 Commodity Futures Trading Commission,

Case No.: 2:19-cv-01697-JAD-DJA

4 Plaintiff

5 v.

**Civil Contempt Order**

6 David Gilbert Saffron a/k/a David Gilbert and  
7 Circle Society, Corp.,

8 Defendants

9 Previously, I granted plaintiff Commodity Futures Trading Commission's  
10 ("Commission" or "CFTC") motion for an order to show cause why defendants David Saffron  
11 and Circle Society Corp. should not be held in civil contempt for violating the court's December  
12 6, 2019, order granting the Commission's motion for a preliminary injunction and other  
13 equitable relief.<sup>1</sup> That order directed Saffron and Circle Society Corp. to appear before the court  
14 on January 24, 2020, and show cause why (1) they should not be held in civil contempt for  
15 violating the injunction order and (2) such other relief as the court may deem just and proper  
16 should not be imposed against them to redress their violations of that order.<sup>2</sup>

17 Although Saffron appeared at the show-cause hearing and offered excuses and promises,  
18 he failed to show cause why he and Circle Society should not be held in civil contempt for  
19 violating the injunction order and subject to further coercive sanctions if they did not soon  
20 comply. I find that the CFTC has established by clear and convincing evidence that Saffron and

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23 <sup>1</sup> ECF Nos. 47 (minutes), 48 (order).

<sup>2</sup> ECF No. 48.

1 Circle Society have violated multiple terms and conditions of the injunction order and that the  
2 CFTC is entitled to relief in the form of coercive sanctions against each defendant.<sup>3</sup>

### 3 **Background**

4 On September 30, 2019, the CFTC filed a complaint naming David Gilbert Saffron and  
5 Circle Society, Corp. as defendants. It alleges that Saffron and Circle Society violated the  
6 Commodity Exchange Act by engaging in a scheme whereby they fraudulently solicited  
7 members of the public to participate in an unregistered commodity pool for the purported  
8 purpose of trading off-exchange, binary option contracts on foreign currency (“forex”) and  
9 cryptocurrency pairs, among other things.

10 On the same date that the CFTC filed its complaint, it also filed an ex parte motion for a  
11 temporary restraining order (“TRO”)<sup>4</sup> and motion for a preliminary injunction (“PI”).<sup>5</sup> The court  
12 granted the CFTC’s TRO Motion on October 3, 2019.<sup>6</sup> Paragraph 3 of the TRO enjoined  
13 defendants from “destroying, mutilating, erasing, altering, concealing or disposing of . . . any  
14 documents related to defendants’ business activities or personal finances.”<sup>7</sup> Paragraph 4 of the  
15 TRO ordered defendants to permit the CFTC to inspect any documents related to defendants’  
16 business activities or personal finances.<sup>8</sup>

17 On November 18, 2019, the CFTC filed a Motion for an Order to Show Cause as to Why  
18 Circle Society Should Not Be Held in Civil Contempt for Violation of the Court’s October 3,

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20 <sup>3</sup> This Order supplements the findings and conclusions that the court placed on the record at the  
January 24, 2020, hearing.

21 <sup>4</sup> ECF No. 5.

22 <sup>5</sup> ECF No. 6.

23 <sup>6</sup> ECF No. 9.

<sup>7</sup> *Id.* at 16, ¶ 3.

<sup>8</sup> *Id.* at ¶ 4.

1 2019 TRO (“Show Cause Motion I”).<sup>9</sup> On November 21, 2019, the court granted the CFTC’s  
2 Show Cause Motion I and ordered Circle Society to appear on December 2, 2019.<sup>10</sup> On  
3 December 2, 2019, the court held a PI hearing, at which it converted the TRO to a PI and  
4 continued the hearing on the CFTC’s Show Cause Motion I to January 10, 2020.<sup>11</sup> Saffron, the  
5 sole corporate officer of Circle Society, did not appear at the hearing. Circle Society’s former  
6 counsel appeared and filed a motion to withdraw as counsel for Circle Society that same day,  
7 which the court granted.<sup>12</sup>

8 On December 6, 2019, the court issued a Preliminary Injunction Order (“PI Order”).<sup>13</sup>  
9 Among other things, the PI Order requires defendants to “provide the Commission with a full  
10 accounting of each defendant’s assets” within five business days following service of the PI  
11 Order.<sup>14</sup> The PI Order also requires defendants to permit the CFTC to inspect and copy their  
12 financial and business books and records, including electronically-stored information and  
13 computer disks.<sup>15</sup> Finally, the PI Order continued the asset freeze imposed by the TRO<sup>16</sup> and  
14 enjoined defendants from further violating the Commodity Exchange Act; from soliciting or  
15 accepting funds from members of the public; and from trading, directly or indirectly, in any  
16 commodity that is regulated by the Commodity Exchange Act.<sup>17</sup>

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18 <sup>9</sup> ECF No. 24.

19 <sup>10</sup> ECF No. 25.

20 <sup>11</sup> ECF No. 30 (minutes).

21 <sup>12</sup> ECF Nos. 28 (motion to withdraw), 29 (order granting motion).

22 <sup>13</sup> ECF No. 31.

23 <sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.* at 6–7.

<sup>16</sup> *Id.* at 4.

<sup>17</sup> *Id.* at 8.

1 On December 20, 2019, the CFTC filed a Motion for an Order to Show Cause as to Why  
2 Defendants David Saffron and Circle Society Should Not Be Held in Civil Contempt for  
3 Violation of the Court’s December 6, 2019, Preliminary Injunction Order (“Show Cause Motion  
4 II”).<sup>18</sup> On January 10, 2020, the court held a hearing on the CFTC’s Show Cause Motions I and  
5 II against both defendants for violating the PI Order. The court issued an Order granting the  
6 CFTC’s Show Cause Motion II, ordering defendants to appear before the court on January 24,  
7 2020, and show cause why (1) they should not be held in civil contempt of court for violating the  
8 PI Order and (2) such other relief as the Court may deem just and proper should not be imposed  
9 against them to redress their violations of the PI Order.<sup>19</sup> Saffron appeared on January 24, 2020,  
10 and offered excuses and promises, but he failed to show cause why he and Circle Society should  
11 not be held in contempt for violating the PI Order.

## 12 Discussion

### 13 A. Legal standard for holding a party in civil contempt

14 A court may hold a party in civil contempt for violating a court order.<sup>20</sup> Civil contempt  
15 sanctions serve “to coerce obedience to a court order, or to compensate the party pursuing the  
16 contempt action for injuries resulting from the contemptuous behavior.”<sup>21</sup> In order to obtain  
17 contempt sanctions, the moving party must demonstrate by clear and convincing evidence that  
18 the other party violated a court order.<sup>22</sup> Once the moving party establishes the violation, the  
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20 <sup>18</sup> ECF No. 40.

21 <sup>19</sup> ECF No. 48.

22 <sup>20</sup> See *United States v. Ayres*, 166 F.3d 991, 994 (9th Cir. 1999).

23 <sup>21</sup> *CFTC v. Emerald Worldwide Holdings*, No. 2:03-cv-8339, 2004 WL 3186580, at \*2 (C.D. Cal. July 29, 2004) (quoting *General Signal v. Donallco, Inc.*, 787 F.2d 1376, 1380 (9th Cir. 1986)).

<sup>22</sup> See *Ayres*, 166 F.3d at 994.

1 burden shifts to the alleged contemnor to produce evidence justifying his non-compliance.<sup>23</sup>

2 The “party petitioning the court for civil contempt does not have to establish that the respondent  
3 intended to violate, or willfully violated, the order.”<sup>24</sup>

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5 **B. The CFTC has established by clear and convincing evidence that Saffron and  
6 Circle Society violated multiple terms and conditions of the PI Order.**

7 The CFTC contends that Saffron and Circle Society have violated the PI Order by  
8 (1) failing to provide the CFTC with a “full and truthful accounting of their assets” within five  
9 business days following service of the PI Order and (2) refusing to make available to the CFTC  
10 for inspection and copying the “books, records, and other documents of defendants and their  
11 agents relating to or referring to defendants’ business activities or business or personal finances  
12 including, but not limited to, paper documents, electronically-stored information, tape  
13 recordings, and computer discs.”<sup>25</sup> The CFTC represents that it has made numerous demands on  
14 defendants to comply with these terms and conditions of the PI Order.<sup>26</sup> It is undisputed that  
15 defendants have not permitted inspection or copying of any of their documents or an accounting  
16 of assets to the CFTC as required by the PI Order. I find that the CFTC has provided clear and  
17 convincing evidence, which defendants have failed to rebut, that defendants have violated the PI  
18 Order’s terms and conditions by failing to provide an accounting of their assets and by refusing  
19 to permit inspection and copying of their books and records.

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20 <sup>23</sup> *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1241 (9th Cir. 1999) (citing *Stone v. City and*  
21 *County of San Francisco*, 968 F.2d 850, 856 n. 9 (9th Cir. 1992)); *Emerald Worldwide Holdings*,  
2004 WL 3186580, at \*2.

22 <sup>24</sup> *Emerald Worldwide Holdings, Inc.*, 2004 WL 3186580, at \*2 (citing *NLRB v. Ironworks Local*  
433, 169 F.3d 1217, 1222 (9th Cir. 1999)).

23 <sup>25</sup> ECF No. 31 at 6–7.

<sup>26</sup> See ECF No. 40 at 5 (Show Cause Motion II).

1 **Conclusion**

2 Accordingly, and with good cause and clear and convincing evidence appearing, IT IS  
3 HEREBY ORDERED that Saffron and Circle Society must:

4 1. Fully comply with all terms and conditions of the December 6, 2019, PI Order;

5 2. No later than February 7, 2020, make available to the CFTC, for inspection and  
6 reproduction, all of defendants' business and financial books, records, and other documents,  
7 including electronically-stored information ("ESI"), or, if defendants are unable to make their  
8 books, records and other documents, including ESI, available to the CFTC, file with the District  
9 Court (with a copy submitted to the CFTC), a declaration under penalty of perjury by Saffron  
10 setting forth in detail all efforts by defendants and their agents to locate defendants' books,  
11 records, and other documents, including ESI;

12 3. No later than February 7, 2020, provide the CFTC with a full accounting of each  
13 defendant's assets, held jointly or separately, within or outside the United States, beginning from  
14 December 2017 for Saffron and from September 2018 for Circle Society to the date of this  
15 Order;

16 4. No later than February 7, 2020, provide written responses to the CFTC, under  
17 oath, to the following questions:

18 a. Have you held or controlled any virtual currency addresses, including  
19 possessing the private keys for any virtual currency address, that has had a  
20 balance greater than zero in the past two years?

21 i. If so, identify the address, provide the corresponding private key  
22 for any virtual currency address, and provide the date on which you  
23 acquired that private key.

1           b.       Have you participated in or directed any virtual currency transactions in  
2           the past two years?

3                   i.       If so, identify the dates, currency, quantity, and your involved  
4                   virtual currency address(es).

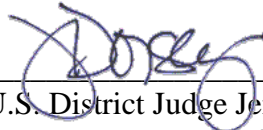
5           c.       Identify all persons and/or entities to whom you have transferred virtual  
6           currency, beginning from December 2017 to the date of this Order, the date of  
7           each transfer, & provide the public keys and public addresses associated with said  
8           transfers, as well as the private keys you used to effect each transfer;

9       5.       Unless Saffron purges his contempt by fully complying with the terms and  
10      conditions of this Order and the PI Order, he must pay to the District Court a daily compliance  
11      fine of \$1,000 per day, beginning on February 8, 2020, and lasting until such time as Saffron has  
12      purged his contempt or the court orders otherwise. Any compliance fine due on a day when the  
13      court is closed, e.g., weekend or federal holiday, must be paid on the next day that the court is  
14      open to the public;

15       6.       Unless Circle Society purges its contempt by fully complying with the terms and  
16      conditions of this Order and the PI Order, it must pay to the District Court a daily compliance  
17      fine of \$1,000 per day, beginning on February 8, 2020, and lasting until such time as Circle  
18      Society has purged its contempt or the court orders otherwise. Any compliance fine due on a day  
19      when the court is closed, e.g., weekend or federal holiday, must be paid on the next day that the  
20      court is open to the public.

21       Finally, Saffron and Circle Society are cautioned that, should either of them fail to  
22      comply with the terms and conditions of this Order, including their individual obligations to pay  
23      a \$1,000 daily compliance fine if they fail to purge their contempt, the court will entertain a

1 motion from the CFTC to impose additional coercive sanctions upon a satisfactory showing by  
2 the CFTC that defendants, or either of them, have failed to comply with the terms and conditions  
3 of this Order.

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U.S. District Judge Jennifer A. Dorsey  
January 30, 2020